

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2702

SPONSOR: Comprehensive Planning Committee and Senator Atwater

SUBJECT: Ad Valorem Tax Levies / Counties

DATE: April 20, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This Committee Substitute (CS) restricts the county property tax millage rate to the rate specified in a county charter. Likewise, the millage rate within a Municipal Service Taxing Unit (MSTU) is restricted to the amount specified in the ordinance establishing the MSTU.

This change will allow the electorate to establish property tax levy limitations in their county charters, which have been ruled to be inconsistent with Florida Law.

This bill amends s. 200.071, of the Florida Statutes.

II. Present Situation:

Property Taxation

Ad valorem taxes or “property taxes” are a major source of revenue for county governments in Florida. In FY 2000-01 (the last year for which fiscal information is available) property taxes constituted 39 percent of county governmental revenue (\$5.2 billion).¹

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.² However, the property tax is not an unlimited source of revenue. The Florida Constitution grants property tax relief in the form of valuation differentials, assessment limitations, and exemptions, which includes homestead exemptions.

¹ Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database @ <http://fcn.state.fl.us/lcir/dataAtoZ.html>.

² Article VII, Section 1 of the State Constitution.

In addition, the State Constitution caps the millage rates assessed against the value of the property.³ For counties, municipalities, and school districts, the cap is 10 mills.

Section 200.071, F.S., in part, implements the constitutional millage cap for counties. Subsection (1) provides that except as otherwise provided, counties may not levy more than 10 mills, except for voted levies, against real property and tangible personal property in their jurisdictions. Furthermore, subsection (3) restricts counties from levying more than 10 mills through a municipal service taxing unit (MSTU) against real property and tangible personal property within each such municipal service taxing unit.

MSTUs

Section 125.01(1)(q), F.S., authorizes counties to establish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided

fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only.

This paragraph further provides that if ad valorem taxes are levied, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units may not exceed 10 mills.

Charter Counties

The Florida Constitution provides that the state be divided by law into political subdivisions called counties.⁴ There are two general types of counties in Florida: charter and non-charter. Non-charter counties have home-rule powers as provided by general or special law, and may enact ordinances that are not inconsistent with general or special law.⁵ Charter counties have all powers of local government not inconsistent with general law or with special law approved by vote of the electors.⁶ This ‘special law’ constitutes a local charter, or a “local constitution” that defines the structure, powers and functions of county government. This charter may only be approved, amended or repealed by the county electorate. Approximately 80 percent of all Floridians live in one of the state’s 19 charter counties.⁷

Recent Efforts to Cap Local Budgets

Numerous past local efforts to establish some type of millage rate or budget cap in county charters have been struck down by the courts as unconstitutional.

³ See Article VII, Section 9 of the State Constitution. A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of table value.

⁴ Article VIII, s. 1(a) of the State Constitution. Ch. 7, F.S., specifies the physical boundaries of the 67 counties in Florida.

⁵ Article VIII, s. 1(f) of the State Constitution.

⁶ Article VIII, ss. 1(c) and (g) of the State Constitution.

⁷ Which are: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Volusia Counties.

- In *Board of County Commissioners of Dade County v. Wilson*,⁸ the Florida Supreme Court found that ch. 200, F.S., set forth the exclusive manner by which to set countywide millage rates. The Court held that a proposed voter initiative to set a county millage rate at four mills for Dade County for the 1980-1981 was unconstitutional.
- In *Board of County Commissioners of Marion County v. McKeever*,⁹ the Fifth District Court of Appeals found that chapters 129 and 200, F.S., contemplated the annual preparation and adoption of the budget and the setting of millage rates by a county commission. This Court struck down a Marion County ordinance that purported to establish a cap of .25 mills of ad valorem tax for the county transportation fund for a period of ten years.
- In *Charlotte County Board of County Commissioners v. Taylor*,¹⁰ the Second District Court of Appeals found unconstitutional a voter approved amendment to the County's charter to limit the Commission's authority to adopt any millage rate which would result in more than a 3% increase in the total revenue generated over the total ad valorem taxes for the previous year. In so finding, the Court noted the charter amendment was inconsistent with the provisions of chapters 129 and 200, F.S. The Court struck down the charter amendment noting that Art. VIII, s. 1(g), State Constitution, provides that the counties operating under county charters shall have all the powers of local self-government not inconsistent with general.
- Attorney General Opinion 2001-04 opined to the Hillsborough County Board of County Commissioners that a county could not amend its charter to place a cap on the annual increase in the county's operating budget with the provision that the cap may be waived by an affirmative vote of at least six of the seven members of the board of county commissioners.
- Recently, in *Ellis v. Burk*,¹¹ the Fifth District Court of Appeals struck down a tax cap provision of the Brevard County Home Rule Charter. The provision prohibited the County from increasing its ad valorem tax revenue in any one year by more than the lesser of 3% or the percentage change of the Consumer Price Index for the previous year, over the previous year's ad valorem revenues without the approval of a majority of the voters at a general or special election. In the decision, the Court stated that "[u]nder our state constitution and statutory scheme, the power to limit a county commission's ability to raise revenue for the county's operating needs by way of ad valorem taxation is effectively and exclusively lodged in the [L]egislature."

⁸ 386 So.2d 556 (Fla. 1980).

⁹ 436 So.2d 299 (Fla. 5th DCA 1983).

¹⁰ 650 So.2d 146 (Fla. 2d DCA 1995).

¹¹ 29 Fla. L. Weekly D195 (Jan. 9, 2004)

III. Effect of Proposed Changes:

Section 1 amends s. 200.071, F.S., to restrict the county property millage rate to the rate specified in a county charter. This change will allow the electorate to establish property tax limitations in their county charters, which have been ruled to be inconsistent with Florida Law.

Through charter amendment, a county may cap the annual growth in ad valorem tax revenues. However, this cap may not restrict the annual growth at a rate below the lesser of 3 percent or the Consumer Price Index. Any such cap must allow for the cap to be overcome by a finding of necessity due to emergency or critical need by a super-majority vote of the county commission. It is the “rolled-back” millage rate that is subject to the cap.

In preparing their respective budgets for submittal to the county commission, constitutional and charter officers are required to comply with any cap in growth established by county charter when submitting their respective budgets to the county commission.

Likewise, the property millage rate within a Municipal Service Taxing Unit (MSTU) is restricted to the amount specified in the ordinance establishing the MSTU.

Section 2 provides that the bill will take effect January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This CS allows county charters to be amended to restrict the millage rates county governments may impose on property for property tax purposes. In addition, it allows similar restrictions be imposed by ordinance for MSTUs.

B. Private Sector Impact:

If the electorate chooses to amend their county charter to restrict the millage rates county governments may impose for property tax purposes, property owners will not be subject to millage rate increases above the rate established in the charter.

Likewise, property owners in areas subject to MSTU property taxes will not be subject to millage rate increases above the rate set in the ordinance which established in the MSTU.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
